

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Steven M. RUBEN

Appl. No.: 10/662,429

Filed: September 16, 2003

For: **Apoptosis Inducing Molecule I**

Confirmation No.: 2663

Art Unit: 1644

Examiner: HUYNH, PHUONG N.

Atty. Docket: 1488.1890003/EJH/SAC

**Declaration of Elliot M. Olstein  
Ruben Exhibit #43**

**BEST AVAILABLE COPY**

Ruben EXHIBIT #43

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Filed on Behalf of Party Ruben

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Sally Gardner Lane)

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STEVEN M. RUBEN

Junior Party,  
(Application 08/816,981),

v.

STEVEN R. WILEY and RAYMOND G. GOODWIN

Senior Party,  
(Patent No. 5,763,223).

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Patent Interference No. 105,077

DECLARATION OF ELLIOT M. OLSTEIN

Ruben EXHIBIT 2043  
Ruben v. Wiley et al.  
Interference No. 105,077  
RX 2043

**DECLARATION OF ELLIOT M. OLSTEIN**

I, Elliot M. Olstein, hereby declare and state as follows:

1. Since 1979, I have been a member of the law firm Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein ("Carella") of Roseland, New Jersey. During the time period encompassing 1995 and 1996, I was the partner-in-charge at Carella of Human Genome Sciences, Inc. (HGS), which was then a client of the firm. In the entire time I was partner-in-charge of HGS, I was responsible for overseeing, *inter alia*, the filing of more than one hundred patent applications in the U.S. Patent and Trademark Office on behalf of HGS. In the 1995 to 1996 time period, Mr. Charles J. Herron and Mr. Gregory D. Ferraro were associates at Carella who worked on HGS matters under my supervision.
2. On January 29, 1996, Mr. Edward R. Gimmi of SmithKline Beecham sent a letter to Dr. Robert Benson of HGS asking whether a patent application had been filed regarding "TNF ligand HTPAN08." RE44. I was copied on this letter. RE44.
3. On January 31, 1996, Kathryn L. Beckman of HGS sent a letter to Mr. Ferraro of Carella forwarding a disclosure and references for a new patent application given the name "Fas Ligand" and assigned the HGS reference number PF261. RE45. In that January 31, 1996 letter, Ms. Beckman instructed Mr. Ferraro to "give this application priority over all other applications you are currently handling for HGS in order that it may be drafted and filed on an expedited basis." RE45.
4. On February 1, 1996, Carella opened up two files for preparing the application identified in Ms. Beckman's January 31, 1996 letter. Initially, a file for a U.S. provisional application was assigned Carella reference number 325800-548.

RE46 . A file for a corresponding Patent Cooperation Treaty (PCT) application was assigned Carella reference number 325800-549. RE47 . Thus, two files were opened up for the preparation of this single application, so that the application could be separately maintained as both a U.S. provisional filing and a PCT filing, as was our practice in general with new HGS applications at that time. Accordingly, the activities by Mr. Ferraro and Mr. Herron that are itemized on the 325800-548 and 325800-549 billing records from February 1, 1996 to March 14, 1996, detailed below, represent a collective effort in the preparation of a single application maintained in separate files for the U.S. provisional and PCT filings.

5. On February 1, 1996, Mr. Ferraro spent 5.5 hours preparing a draft patent application. RE48 . On Friday, February 2, 1996, Mr. Ferraro sent a copy of the draft application to Robert Benson of HGS, under a cover letter asking Mr. Benson to have the application reviewed ( RE49 ).

6. On March 4, 1996, Mr. Herron spent 1.5 hours reviewing the file for the application. RE50 . On March 5, 1996, Mr. Herron spent 1.0 hours reviewing the draft patent application and calling Ms. Beckman. RE50 On March 8, 1996, Mr. Herron spent 1.2 hours reviewing the draft patent application with the inventor.

RE50 . On March 13, 1996, Mr. Herron spent 6.0 hours preparing the patent application.

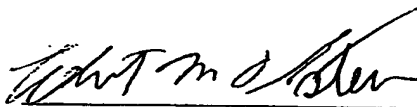
RE50 . On March 14, 1996, Mr. Herron spent 4.5 hours preparing and filing both the U.S. provisional and PCT applications. This March 14, 1996 preparation activity included correspondences between Mr. Herron and both Robert ("Bob") Benson and inventor Steven Ruben of HGS by telefacsimile. RE51 .

7. Based on the foregoing, I conclude that from the time Ms. Beckman of HGS contacted Carella on January 31, 1996 ( RE45 ), until the filing of U.S. provisional application number 60/013,405 on March 14, 1996 ( RE50), RE52 (the application) and RE53 (filing receipt for such application)), the application preparation process was carried out by Carella on an "expedited basis" as requested by Ms. Beckman in her January 31, 1996 letter ( RE45); i.e., the application was worked on and completed over a time period that is significantly less than the time period that is normally required at Carella for working on and completing a patent application.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application captioned above or any patent issuing thereupon.

Date:

6/18/04



Elliot M. Olstein